
ADVISORY MEMORANDUM

TO: All Health Insurers Issuing Major Medical Health Insurance in Montana

**FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor**

DATE: November 13, 2013

**CLARIFICATION REGARDING WHAT CONSTITUTES
“REASONABLE ASSURANCE” AS IT RELATES TO PEDIATRIC DENTAL
BENEFITS AND PROHIBITING “FORCED” OR “AUTOMATIC ENROLLMENT”**

This advisory memorandum provides guidance from the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), regarding what constitutes “reasonable assurance” as it relates to pediatric dental coverage.

Section 2707 (a) of the Patient Protection and Affordable Care Act (ACA) requires that a “health insurance issuer that offers health insurance coverage in the individual or small employer group market shall ensure that such coverage includes the essential health benefits package (EHB) required under section 1302 (a) of the Patient Protection and Affordable Care Act.” Section 1302 (b) includes as part of the EHB “pediatric services, including oral and vision care.” [ACA Section 1302 (b) (1) (J)]

Section 1301 (a) (1) of the ACA requires health plans sold inside and outside of an Exchange to include the EHB. However, sections 1302 (b) (4) (F) of the ACA and 45 CFR § 155.1065 (d) state that health insurance plans offered on an Exchange will not fail to be certified as a qualified health plan solely because the plan does not offer coverage of pediatric dental services, if a certified stand-alone dental plan covering these services is available in the Exchange.

The U.S. Department of Health and Human Services (HHS) provided recent guidance regarding coverage of pediatric dental services in the preamble of its final rule “Patient Protection and Affordable Care Act, Standards Related to Essential Health Benefits, Actuarial Value and Accreditation” stating:

In cases in which an individual has purchased stand-alone pediatric dental coverage offered by an Exchange-certified stand-alone dental plan off the Exchange, that individual would already be covered by the same pediatric dental benefit that is part of EHB. When an issuer is reasonably assured that an individual has obtained such coverage through an Exchange-certified stand-alone dental plan offered outside an Exchange, the issuer would not be found non-compliant with EHB requirements if the issuer offers that individual a policy, that when combined with the Exchange certified stand-alone dental plan ensures full coverage of EHB. This alternate method of compliance is at the option of the medical plan issuer and would only apply with respect to individuals for whom the medical plan issuer is *reasonably assured* have obtained pediatric dental coverage through an Exchange-certified stand alone dental plan.

Health insurers in the individual and small employer group market selling products off the Exchange that do not have “embedded” pediatric dental benefits must disclose to all applicants and consumers shopping for coverage that pediatric dental services are a required benefit that is not included in the health plan being offered by that insurer. The disclosure must be provided at the time of solicitation and requires that the insurer receive “reasonable assurance” from the consumer that pediatric dental services will be obtained. CMS has not further defined “reasonable assurance.” Therefore, the CSI has determined that reasonable assurance does not require or include “automatic” or “forced” enrollment in a stand-alone pediatric dental plan.

CSI suggests the following language for the required disclosure at the time of solicitation and enrollment:

This health insurance policy does not include pediatric dental services as required under the Federal Patient Protection and Affordable Care Act. “Stand-alone” qualified pediatric dental plans are available for sale from several different insurers. Some of these products include adult dental, which is not a required coverage. Only “qualified dental plans” meet the federal requirements of EHB. By signing this enrollment form, you are indicating that you have already purchased or will seek to purchase pediatric dental coverage.

Insurers on or off the Exchange may not “automatically enroll” or “force” enrollment in a stand-alone pediatric dental plan.

If you have questions about this advisory memorandum, please contact Christina L. Goe, General Counsel at cgoe@mt.gov or 406-444-2040.